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In the Supreme Court of the United States

OCTOBER TERM, 1941

NEBO OIL COMPANY, a Trust, by W. H. Clement, Trustee,
Petitioner,

VERSUS

GUY T. HELVERING, Commissioner of Internal Revenue,
Respondent.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

T. MURRAY ROBINSON,
Attorney for Petitioner.

August, 1942.

UTTERBACK TYPESETTING CO., OKLAHOMA CITY, OKLA.

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We submit for consideration the following language in the case of *Wilmington Trust Company* v. *Helvering*, decided April 27, 1942, reported 62 Supreme Court Reporter, page 984. Therein this Court said:

> "The true character of the 'short' account is a question of fact to be determined in the light of the outward or manifested intention of the taxpayer and the way in which the account was actually managed. The designation of the accounts, the fact that as a matter of bookkeeping sales made through the 'short' account apparently were not reflected in the 'long' accounts, the method of reporting gains or losses are some evidence to support the conclusion of the court below. But there are numerous other circumstances which look the other way. They are embraced in the several subsidiary findings which the Board made and which we have enumerated. Those findings are supported by substantial evidence and are abundant justification for the Board's ultimate finding that the sales made through

> the 'short' account were ordinary sales. It is the function of the Board, not the Circuit Court of Appeals, to weigh the evidence, to draw inferences from the facts, and to choose between conflicting inferences. The court may not substitute its view of the facts for that of the Board. Where the findings of the Board are supported by substantial evidence they are conclusive. *Helvering* v. *F. & R. Lazarus & Co., supra; Helvering* v. *Kehoe*, 309 U. S. 277, 60 S. Ct. 549, 84 L. ed. 751, and cases cited. Under the statute the court may modify or reverse the decision of the Board only if it is 'not in accordance with law." 44 Stat. 110, Sec. 1003(b), 26 U. S. C. Int. Rev. Code, Sec. 1141(c) (1), 26 U. S. C. A. Int. Rev. Code, Sec. 1141(c) (1)."

Applicability of that language to the petition for writ of certiorari herein sought is quite apparent. The board, giving greater weight to some portions of the evidence, decided that taxpayer was a trust. The Circuit Court, giving greater weight to other portions of the evidence, decided that taxpayer was an association taxable as a corporation. This the Court could not do.

Respectfully submitted,

T. MURRAY ROBINSON,
Attorney for Petitioner.

August, 1942.

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